convicted and punished, for the order of their superior would afford no defence.

The deliberate provoking of an offence merely because it is suspected that the person provoked has previously committed a similar offence cannot be too strongly condemned and Lord Goddard's comments should be brought to the notice of the Police authorities for such action as they may think necessary.

For the reasons set out above I treat this matter as an application for revision and set aside the conviction and sentence and order the accused to be retried.

Re-trial Ordered.

ESTATE OF LEE CHOON GUAN (Deceased); TAN TECK NEO v. GEORGE TAN AND OTHERS.

[Privy Council (Lord Simonds, Lord Radcliffe and Sir Malcolm Macnaghten) October 12, 1949]

[Privy Council Appeal No. 79 of 1947]

Will — Direction to pay annuities out of residuary trust income — Whether annuities cease at period of division of the capital of residuary trust fund.

In this case the testator by his Will provided for the payment of annuities to the appellant, the widow of the testator and his four concubines. The Will further provided that the payments of the annuities were to be apportioned equally between two residuary funds referred to in the Will. The residuary estate of the testator fell to be finally divided among the grandchildren and the remoter descendants of the testator at the expiration of 21 years from his death namely on the 27th of August, 1945. At that date all the annuitants were still living. The question was then raised as to whether the annuities ceased at the period of final distribution of the residuary fund. The learned Chief Justice and the Court of Appeal held that the rights of the annuitants came to an end as they were charged upon the income of residuary trust funds, which had to be finally distributed and could therefore produce no further income.

Held, (1) that the provision in the Will for the payment of the annuities out of the two funds was a mere administrative provision to ensure that the trustees who keep the accounts of the estate are to charge these payments in equal amounts upon the two funds of residuary income created by the Will and had no other purpose; and (2) that therefore the annuities continue to be payable during the lives of the respective annuitants.

The judgment of the Board was delivered by :—

Lord Radcliffe : — The purpose of this appeal is to establish the rights of two classes of beneficiaries under the will and codicil of a Chinaman, Lee Choon Guan, who died at Singapore on 27th August 1924. One class consists of the appellant herself, the widow of the testator and the defendant Lee Chim Tuan, a trustee of the will and Codicil; the other is formed by four women whose names are given in Clause four of the codicil and to whom the testator directed his trustees to make certain monthly payments during their respective lives. All these beneficiaries may conveniently be referred to as "the annuitants".

By virtue of certain dispositions contained in the will and codicil which will be referred to in detail hereafter the testator's residuary estate fell to be finally divided among his grandchildren and remoter descendants at the expiration of 21 years from his death, namely, on 27th August, 1945. At that date all the annuitants were still living. The construction of the Will and Codicil which has found favour with the learned Chief Justice in the High Court of the Colony of Singapore and on appeal with the learned Judges of the Court of Appeal of that Colony is to the effect that on that date the rights of each of the annuitants came to an end, and that as a consequence this event of the division of residue into capital shares left the testator's widow and the four other ladies, who were in fact his concubines, without any further right to look to his estate for the payment of the monthly sums which they had hitherto been receiving.

This construction does not commend itself to their Lordships as correct. It appears to them to involve a confusion between administrative provisions regulating how these annuities, when paid, were to be charged against the residuary estate, in which there were numerous and settled interests, and substantive provisions specifying the source of the annuities themselves. And it also appears to them to give inadequate weight to the fact that the annuities are expressly given for the respective lives of the annuitants. But it is impossible to discuss what is at issue in this question of construction and to explain why their Lordships feel constrained to differ from the views taken in the Courts below without briefly setting out the scope and contents of this Will and Codicil so far as they are material.

The will was made on 11th March, 1913. It began with an appointment of executors and trustees and the gift of a number of pecuniary legacies to vest immediately on the testator's death. Clause 6 (which the codicil revoked) directed the trustees to purchase an annuity of 480 dollars a year for his concubine Ah Lee (one of the four later mentioned in the Codicil) during her life. Then there followed (a) further immediate legacies, (b) a settlement of the testator's house and furniture on his widow for life with remainders over, and (c) a direction to his trustees to pay the funeral expenses of himself (up to 10,000 dollars) and of his widow (up to 5,000 dollars). It is true, as the appellant points out, that the time for the payment

of the widow's funeral expenses might possibly have been later than the date fixed by the will for final distribution of residue, namely, the death of the last survivor of the testator's children.

Clause 11 contained a residuary gift of "all other the rest and residue of my real and personal estate not hereby or by any Codicil hereto otherwise disposed of" to the trustees with provisions for dividing the income of residue into two separate funds according to whether items of such income arose from real or leasehold properties or mortgages of such property or from other investments. It is not possible to find in the will any purpose other than that of convenience of administration for the creation of these separate funds of income. Then followed Clause 12. By this clause the testator directed his trustees after paying outgoings and retaining in hand provision for assessments, repairs and emergencies to pay to his widow "during her life", she remaining his widow, the sum of 1,000 dollars a month, reducible to 100 dollars a month if she should remarry. The trustees were then to pay to Lee Chim Tuan the sum of 100 dollars a month "during his lifetime". The clause continued as follows: "The monthly payments set out in this clause shall be paid as to one-half from out of the income of my house and other real and leasehold properties and mortgages and as to the other half by the income from my other investments. The first of such monthly payments shall be made one month after my death".

Clause 13, after opening with the important words "After providing for the outgoings, payments and charges hereinbefore set out", proceeded to direct monthly divisions of the income arising from the house real and leasehold and mortgage assets between the testator's children. Clause 14 directed that the other income fund should be accumulated and the accumulated fund divided at the end of every five years (shortened to three years by the codicil), from the testator's death among the children in the same proportions as the income of the other fund was directed to be divided among them.

The testator then made somewhat detailed provisions for substituting rights to shares of income pending the period of final distribution. Nothing turns directly upon them, but it is impossible not to contrast his arrangements for the widow of a son or remoter male issue dying before the date of distribution (and thereby forfeiting a share of income) with the arrangements that he is said to have made for his own widow and the other annuitants in this case if the Respondent Tan's argument is right. By Clause 18 he directed that such a widow should be entitled to be paid monthly during her lifetime the sum of 100 dollars "out of the income of the share of such deceased son or remoter male issue before the same shall go over under the provisions of this my will". And by Clause 26, after Clause 24 has directed a final distribution that would include no share for her, he makes special provision to enable the widow to receive at that same date a sum of 5,000 dollars out of the share of the stirps to which her dead husband had belonged. In other words, in these cases, the testator has both made an express statement that the life annuity given is only to be found "before the income shall go over under the provisions" of the will and has also provided a capital legacy in compensation at the date when the annuity is so to determine.

Finally, there is Clause 24. It is not necessary to set it out in detail. The event upon which it was to operate was the death of the last survivor of the children to whom shares of income had been given in Clause 13. Upon that event the trustees were empowered to sell, call in and convert into money the whole of the real and personal estate or at their discretion to make such partition or appropriation of the property and investments as they might think fit and were directed to divide the whole of "my residuary real and personal estate" among the testator's grandchildren and remoter issue as therein directed.

The codicil which was made on 16th April, 1919, effected material changes in the provisions of the will. Only four are relevant for the present purpose. They will be noticed in order. By Clause 4 the testator revoked Clause 6 of his will and in place thereof directed the trustees to pay the sum of 120 dollars each per month "during their respective lives" to the four named annuitants, adding "such payments shall be apportioned equally between the two funds referred to in Clause 11 of my said will". By Clause 6 the testator turned the life interest in his house and furniture which he had given by his will to his widow into an absolute interest. By Clause 7 he declared that in lieu of the monthly payment of 1,000 dollars bequeathed to his widow he bequeathed her a monthly payment of 2,000 dollars (irrespective of remarriage) and that in lieu of the monthly payment of 100 dollars bequeathed to Lee Chim Tuan he bequeathed a monthly payment of 200 dollars. The clause concluded, "Such monthly payment shall be apportioned equally between the two funds referred to in Clause 11 of my said Will". Lastly, by Clause 12 of the codicil, the testator directed that the date of distribution referred

to in Clause 24 of his will should be 21 years after the date of his death.

What then did the testator's dispositions amount to so far as concerned the annuitants? The simpler case is that the four concubines, since their rights are wholly contained in the provisions of Clause 4 of the codicil. Ignoring technical terms, each of these annuitants is entitled during her life to receive a monthly sum of money out of the testator's estate. An annuitant is one kind of legatee, and neither legatee nor annuitant is prima facie concerned with any question as to the part of the estate that provides his annuity or as to whether income or corpus is drawn upon for the payment. His interest is to get his money out of the estate. Where, as so often happens, the testator's estate out of which the annuity is to come is divided among different beneficiaries or is settled so that some are interested in its income and some in its capital, it is important, in order that their respective interests may be accurately measured, that there should be rules determining how the charge of a legacy or annuity should be borne as between themselves. And, no doubt, it is for this purpose the general rule that an annuity is payable out of income, if income is available for the purpose. But such a rule does not exist to limit the rights of the annuitant: it exists to regulate the respective rights of those who take subject to the annuity. Now, in the present case, all that the testator has done is to add to his gift of these annuities for the "respective lives" of the annuitants a separate sentence "Such payments shall be apportioned equally between the two funds referred to in Clause 11 of my said will". Such a phrase, in their Lordships' view, is not intended nor is it calculated, to subordinate the rights of the annuitants to the dispositions of income and capital of residue that are contained in the will and codicil so that the date when the trusts of residuary income determine is to be taken as the date which determines annuity. It is a mere administrative provision ensuring that the trustees who keep the accounts of the estate are to charge these payments in equal amounts upon the two funds of residuary income that the will creates. It has no other purpose.

The same considerations must be applied to interpret the annuities given to the widow and Lee Chim Tuan. In this case it is more accurate to say that the original source of gift remains in Clause 12 of the will and that the function of Clause 7 of the codicil is merely to alter the amounts and to some extent the conditions of the gifts so bequeathed. It is as bequests of monthly sums that they are referred to in the codicil and this is, in their Lordships' view, their proper description. Moreover, since the codicil is a modification, not a revocation, of the provisions of the will, the annual sums are in fact expressly given for the respective lives of the annuitants as the will provides. So interpreted they are for all relevant purposes of the same status as the gifts to the other annuitants in Clause 4 of the codicil. It is true that these annuities take their place in the will between Clause 11, which creates the two funds of income, and Clause 13 which begins the division of residuary income up to the date of the final distribution. But neither this circumstance nor the direction contained in Clause 12 as to how the annuities are to be borne as between the two funds of income is capable of making income arising under the trusts of residue the sole possible source of these annuities. They are a great deal more than a mere share of residuary trust income. The truth is that the testator's direction that they are to be paid during the lives of their recipients has precedence over the trusts of residue, whether of income or corpus. Plainly the direction that the first payment of the annuities is to be made one month after the testator's death is to be effective whether income of residue has accrued or not accrued (as would be expected by that date. Plainly the direction that the income arising from the estate investments other than real or leasehold property is to be accumulated is subject to the provision that the annuities to the widow and Lee Chim Tuan are to be paid monthly and, as to half out of such income. Considerations such as these illustrate what is in their Lorships' view the necessary construction of the will, namely that the dispositions of residue that begin with Clause 13 and end with Clause 26 of the will are all subject to the primary right of the annuitants to have their money. If this is so under the will it is not the less so under the codicil. But if this is so, it follows that the right of the annuitants to continue to receive their annuities during their lives is no more dependent upon there being subsisting trusts for the division of residuary income under the will than the payment of the 5,000 dollars for the widow's funeral expenses is contingent on her death before the date of final distribution.

The question under appeal was raised by Question 2 of an originating summons taken out by the trustees of the will and codicil. This question was answered by an order of the High Court made on the 9th August, 1946, which declared that the annuities bequeathed by Clause 12 of the will as modified by

Clause 7 of the codicil and the annuities bequeathed by Clause 4 of the codicil cease to be payable after the date of distribution. This order was affirmed in the Court of Appeal on 8th February, 1947.

For the reasons which appear above their Lordships are unable to agree that this is the right answer. It is unnecessary to make any detailed reference to the judgments of the Judges in the High Court, and the Court of Appeal of the Colony from which their Lordships have derived assistance, but in general those judgments appear to base their conclusion on the fact that the will directed that the annuities should be charged upon or paid out of the residuary trust income, and to deduce from this as a necessary consequence that the rights of the annuitants must determine when the residuary trusts cease to dispose of income and reach the date for division of capital. Their Lordships cannot accept that this is a necessary consequence of such a provision for charging or payment: and upon the will and codicil that are now in question they are satisfied that it is not the right consequence.

The order of the High Court dated 9th August, 1946, in so far as it consists of the second paragraph of that order, and the order of the Court of Appeal dated 8th February, 1947, in so far as it dismissed the appellants' appeal (but not otherwise) must be set aside. In lieu of the declaration contained in the second paragraph of the High Court order it should be declared that the annuities therein mentioned do not cease to be payable after the date of distribution prescribed by Clause 12 of the codicil but continue to be payable during the lives of the respective annuitants. The costs of the appellant and the respondent George Tan of this appeal must be taxed as between solicitor and client and paid out of the estate of the testator. Their Lordships will humbly advise His Majesty accordingly.